

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-CV-00329-GKF-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants		

**STATE OF OKLAHOMA’S MOTION FOR PROTECTIVE ORDER
AND MOTION TO QUASH DEPOSITION NOTICE**

Plaintiff State of Oklahoma files its Motion for Protective Order under Fed. R. Civ. 26(c), seeking a court order prohibiting the taking of depositions of 30(b)(6) witnesses by Defendant Cobb-Vantress until after May 15, 2008, and quashing the deposition notice of April 14, 2008. In support of its Motion the State submits the following arguments:

1. This motion is required because the State is fully engaged in preparing expert reports in this matter, as well as other discovery tasks in this case. Additionally, as demonstrated below, Defendants’ most recent Rule 30(b)(6) deposition notice materially expands the number of subtopics upon which questions will be asked, requiring substantial new preparation. The State has explained these circumstances and problems to counsel for Defendants, but defense counsel has rebuffed the attempt to delay these depositions—and has in fact suggested the filing of this very motion.¹ Thus, this motion for a protective order and motion to quash is necessary and should be granted.²

¹ After written correspondence between the parties, described below, on April 25, 2008 undersigned counsel spoke by telephone with counsel for Defendant Cobb-Vantress, Inc. and the remaining Tyson defendants, Mr. Robert George. Mr. George was in his office in Arkansas, and undersigned counsel was in his office in Oklahoma City, more than thirty (30) miles from Mr. George’s office. Counsel for the State indicated that because of the need to prepare expert reports in this case, counsel for the State could not present Rule 30(b)(6) witnesses noticed for

2. Pursuant to a cooperative agreement between the parties, in late 2007 the Defendants presented to the State with a series of twelve proposed Rule 30(b)(6) deposition notices. *See* Exhibit 1. While there was some discussion and correspondence about these topics, work on the State's motion for preliminary injunction delayed complete discussion on the topics, and delayed the depositions themselves.

3. On April 14, 2008, Defendant Cobb-Vantress, Inc. submitted new 30(b)(6) notices to the State of Oklahoma. These notices, while bearing some similarity to the previous 30(b)(6) list of topics from late 2007, were significantly more detailed and expanded, requiring the preparation on significantly more sub-topics than had been requested earlier on comparable topics. The noticed required that the deposition take place on April 28, 2008. *See* Exhibit 2, letter and notice from Michael Bond.

4. On April 17, 2008, the State sent a letter to Counsel for Cobb-Vantress, Inc., In that letter, the State explained that it could not produce a witnesses on April 28, 2008 and requested that the 30(b)(6) depositions be moved until after May 15, 2008. *See* Exhibit 3, letter from Robert Nance.

5. On April 18, 2008, Counsel for Cobb-Vantress replied that the Defendants would move the deposition date, but would not move it after May 15, 2008. *See* Exhibit 4, Letter of Michael Bond. Counsel for the State elaborated the reasons for the needed delay in a letter to all counsel on April 25, 2008 after speaking with Mr. George. *See* Exhibit 5, letter of Robert Nance.

deposition on April 28, 2008 before the expert report due date of May 15, 2008. Rather than defer the noticed Rule 30(b)(6) depositions until after the State's counsel have completed the State's expert reports, Mr. George suggested the filing of this motion. This suggestion, made on April 25, 2008, indicated to the State that no further discussion about the timing of these depositions would be fruitful.

² The State has additional objections to the over breadth topics in Attachment A to the April 14, 2008 notice, to fact that they repeat areas already covered in written discovery, and to the burden it will impose on the State. However, the parties have not yet had the opportunity to meet and confer on these topics, and the State reserves the right to move for further relief if issues remain after the parties have conferred.

6. The new 30(b)(6) notices are materially different from the original 30(b)(6) notices served upon the State in late 2007. The following chart summarizes the increased detail required by the April 14, 2008 notices:

Topic	Subparts in earlier list	Subparts in April 14 list
Total Maximum Daily Loads ("TMDLs")	4	12
Wastewater/Point Source Discharges	4	18
State Purchase or Use of Animal or Chemical Fertilizers	4 (excludes some poultry litter topics covered in another notice)	4 (appears not to exclude poultry litter)
Biosolids or Sewage Sludge	5	8
State owned or leased land	4	5

7. The Court held in its January 16, 2008 minute order (DKT# 1462) that the 30(b)(6) depositions would take place after the Motion for Preliminary Injunction hearing. The State diligently prepared for the Preliminary Injunction hearing during the November 2007-March 2008 timeframe.

8. The State's expert reports are now due on May 15, 2008. The State has been and is continuing to work on preparing and producing its expert reports to meet the May 15, 2008 deadline.

9. The State cannot simultaneously prepare 30(b)(6) witnesses, especially because of the materially greater additional breadth that the new notices contain, while preparing its expert reports and production.

10. Federal Rule of Civil Procedure 26(c) governs entry of protective orders, and allows a court where "good cause" is shown to "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." The Rule specifically contemplates entry of an order delineating the time of particular discovery,

Fed. R. Civ. P. 26(c)(B). Local Civil Rule 83.8(j) establishes as a principle intended to guide attorneys before this court that counsel not arbitrarily or unreasonably withhold consent to a just request for cooperation or a scheduling accommodation.

11. The State has indicated its willingness to present Rule 30(b)(6) witnesses on the general topics included in Attachment A to the April 14, 2008 notice, reserving certain objections to the breadth, repetitiveness, and burden of some of the subparts proposed to be inquired into. The Court will recall that the State asked for additional time within which to prepare its expert reports, and Defendants opposed that request. The Court granted less time than the State requested. Now Defendants have presented materially altered deposition topics during the period within which counsel are working on expert reports, and demand that depositions be conducted two weeks after the date of the notice, and before those expert reports are complete. The timing of the proposed deposition is unjust, overly burdensome, and likely to disrupt the preparation of the State's expert reports.

Accordingly, the State respectfully requests the Court enter a Protective Order prohibiting the Defendants from taking their new notice 30(b)(6) depositions until after May 15, 2008 and quash the notice of April 14, 2008.

Respectfully Submitted,

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